

SUMMARY OF DRAFT ROAD DEVELOPMENT AGREEMENT BETWEEN PORT OF HOUSTON AUTHORITY AND HARRIS COUNTY

The Road Development Agreement ("Agreement") governs the joint efforts of Harris County (the "County") and the Port of Houston Authority ("PHA") to improve certain roadways in Southeast Harris County. Each party has agreed to take on specific responsibilities to cause the design, construction or improvement of designated roads. Exhibit A shows these roads as the identified projects ("Identified Projects.") These Identified Projects are important to the efficient flow of transportation in and around the Port of Houston and in Southeast Harris County. Among the Identified Projects are Port Road and Barbours Cut Boulevard. Both Port Road and Barbours Cut Boulevard are acknowledged as priority projects in the Agreement. The road improvements will be financed by matching contributions from PHA and the County as described in the Agreement. Exhibit B shows the required payment amounts and schedule of payments.

Term

The Agreement has a five (5) year term, beginning upon execution of the Agreement.

PHA's Obligations

1. PHA will make payments ("Fixed Contributions") to the County totaling \$39,250,000. These Fixed Contributions will be made in incremental payments over the term of the Agreement as shown on Exhibit B. PHA is allowed to make certain deductions (credit) from its payments as discussed below and shown on Exhibit B.
2. PHA will perform all of the design, engineering and construction work on the Port Road project and pay the costs associated with same (as set out below). PHA is entitled to deduct from its Fixed Contribution a credit ("Port Road Rebate Deduction") of \$9.7 million for its work on Port Road.

County's Obligations

1. The County will perform, or cause to be performed, all of the design, engineering, right of way acquisition, pipeline, utility and railroad adjustments and relocations, environmental and construction work for the Identified Projects (except Port Road).
2. The County will use the PHA payments (Fixed Contributions) toward the actual costs of the Identified Projects (except Port Road), including design, engineering, right of way acquisition, adjustments and relocation of pipelines, utilities and railroads, construction, management, environmental matters, etc.
3. The County will contribute matching funds ("Matching Funds") in an amount no less than the Fixed Contributions toward the costs of the road projects. The County may use any actual costs occurred for the Identified Projects and any other monies (city, state, federal or private) spent on these projects as a credit toward its Matching Funds obligation.

4. The County may, in its discretion, establish a priority schedule for roads on Exhibit A. Except, the parties acknowledge that Port Road and Barbours Cut Road are priority projects.
5. The County will administer all aspects of the design, construction and environmental work for the Identified Projects (except Port Road). The County will advise PHA on the status and progress of the projects. Failure by the County to make reasonable progress on the projects shall be grounds for PHA to withhold payment and/or cancel the Agreement.

Mutual Obligations

1. The parties pledge to work in good faith to carry out the Agreement. County and PHA staff will meet to discuss common needs and timing issues.
2. Joint approval from both the County and PHA is required to change the list of Identified Projects or to change the obligations of each party set forth in the Agreement or to change the priority status of Port Road and Barbours Cut Boulevard. Changes to this Agreement must be in writing and approved by both Commissioners Court and the Port Commission.
3. The parties are required to work together and make good faith efforts to secure state and/or federal funds for the Port Road Project.

Port Road Project

The Agreement contemplates the creation of a redesigned and rerouted Port Road. The Port Road project will be done in three phases. PHA will have the responsibility for design, construction and related matters for Port Road in all three phases.

1. PHA will pay for the total project costs for the Port Road project for Phase 1. PHA will pay the project costs for Phases 2 and 3, except actual construction costs.
2. The County will have no obligation to pay any project costs for Port Road during any phase.
3. The County and PHA will work together in good faith to secure state or federal funding for Port Road, including construction costs for Phases 2 and 3.
4. The Authority, at the County's request, will notify all affected entities in the Port Road right of way (pipelines, utilities, etc.) and request any necessary removal, adjustment or relocation as required by law. The Authority will bear the costs of removals and relocations in situations where the County has no legal right to require removal at owner's expense. The County has no obligation to acquire land or other interests in real property for the Port Road project.
5. PHA is not obligated for future maintenance of Port Road beyond the first 10 years. The County has the continuing duty for ongoing maintenance of Port Road.

6. If major reconstructive repairs are necessary for the newly concreted areas of Port Road within 10 years of this Agreement, PHA will make the reconstructive repairs or reimburse County for such repairs.

Land Exchange Requirements for Port Road Project

In order to accommodate a rerouted Port Road, the County and PHA have agreed to exchange certain parcels of land. The Agreement requires each party to make these land exchanges consistent with the timing requirements of the Port Road project.

1. Upon execution of the agreement, PHA's Executive Director is authorized to deed to the County (for development of new Port Road) the fee interest in certain parcels of land (0.7645 acres, 16.4208 acres, 2.0053 acres, 2.5271 acres and 0.7380 acres) and grant an easement for public roads and drainage purposes in another tract of land. These parcels will be used for a new rerouted Port Road. The PHA also pledges to cause San Jacinto Rail Limited and Exxon Pipeline Company to grant easements to the County for public road drainage purposes. Failure to get said easements removes the County's obligation to go forth with the Port Road project.
2. The County is obligated to deed to PHA parcels of land constituting portions of existing Port Road that will be replaced by the new, rerouted Port Road. The County's conveyance will be after (a) PHA's conveyance above) (b) relocation of pipelines and utilities, (c) completion of construction of Port Road, (d) acceptance of Port Road by County Engineers, and (e) opening of new Port Road—Phase 1 to the public. PHA has a right of specific performance if the County does not comply with this obligation.
3. After the opening of new Port Road (during Phase 1), PHA is authorized to remove certain portions of old Port Road (County property) to accommodate the construction of a facility terminal gate.

Limitations on Obligations

1. The County may only use PHA's payments for the work contemplated in the Agreement.
2. If total costs of the projects exceed projections, neither the County nor PHA is obligated to make additional contributions beyond the Authority's Fixed Contributions and the County's Matching Funds.
3. There is an adjustment and accounting of contribution in the final year of the Agreement. This allows an equalizing of County's Matching Funds contribution by allowing PHA to withhold or adjust the amount of its final incremental payment.
4. If the Identified Projects on Exhibit A cannot be completed within the term of the Agreement, the County may finish the projects after the term without a default.

Fairmont Parkway Overpass

PHA will continue to serve as local sponsor for the Fairmont Parkway Overpass Project. PHA is entitled to a credit (Fairmont Parkway Rebate Deduction) to its incremental payments mentioned above for its monetary contributions as a local sponsor to the Fairmont Parkway Overpass Project

Termination Rights.

The Agreement may be terminated by mutual agreement. The Agreement may also be terminated for cause (default) or for convenience (unilateral desire).

If the County terminates for convenience, it must refund to PHA all funds contributed by PHA and not actually spent at the time of termination. If PHA terminates for convenience, it must pay the County for project costs actually contracted for by the County in reliance of this Agreement (not to exceed PHA's total obligation for fixed contribution), so long as the County completes the project for which contributions have been made.

Except for PHA's right to specific performance to enforce the County's land exchange obligation, the sole and exclusive remedy for default by either party is the right to terminate the Agreement.

Dispute Resolution

The parties will work together to resolve any differences or disputes. Voluntary mediation may be utilized to resolve any disputes after efforts to resolve by the parties are unsuccessful.

EXHIBIT A

IDENTIFIED PROJECTS

The County and the Authority have identified the road and street improvements below as being of common interest to both parties.

PROJECT NAME
Sens Road — S.H. 225 to Spencer Hwy
Barbours Cut Blvd. (also known as Crestlane Street)— S.H. 146 to Turnaround at end of Barbours Cut Blvd. ¹
Bay Area Blvd. — Fairmont Parkway to Spencer Highway
Port Road Project ²
Fairmont Parkway Overpass — UP rail corridor near S.H. 146
Pasadena Boulevard Phases II — Pansy St. to Burke Road and Red Bluff Rd. to Beltway 8 Pasadena Boulevard Phase III — Strawberry Rd. to Burke Rd. ³

PROJECT NAME
Railroad Ave. — Center St. to S.H. 225
Genoa Red Bluff Rd.— Red Bluff Rd. to Fairmont Parkway
Crenshaw Rd. Extension — Beltway 8 to Space Center Blvd.
Southmore St. Phase I — Richey St. to Strawberry Rd.
Pansy St. Improvements — Crenshaw Rd. to Old Vista Rd.
Burke Road Phase III — Red Bluff Rd. to Southmore St.
Scarborough St. overlays and drainage improvements — Southmore St. to S.H. 225
Fairmont Parkway Bridge @Armand Bayou

¹ The Parties recognize that Barbours Cut Blvd. is a priority project.

² The Parties recognize that the Port Road Project is a priority project.

³ City of Pasadena has completed the engineering and the County can use engineering costs as a credit for its Matching Funds. The City of Pasadena may assume the management of this project.

EXHIBIT B

PAYMENT SCHEDULE FOR ROAD DEVELOPMENT AGREEMENT

I. PHA'S OBLIGATION IS A FIXED CONTRIBUTION OF \$39,250,000

<u>Payment Date</u>	<u>Incremental Amount</u>	<u>Deduction</u>
March 25, 2005	\$ 13,000,000	\$4,600,000 for Port Road Rebate Deduction ✓ 8.4
March 25, 2006	\$ 12,000,000	\$5,100,000 for Port Road Rebate Deduction 6.9
March 25, 2007	\$ 4,750,000	
March 25, 2008	\$ 4,750,000	
March 25, 2009	\$ 4,750,000	
		Fairmont Parkway Rebate Deduction (amount to be determined)
		Final Accounting Deduction (if applicable)
		Failure of County to make reasonable progress is basis to withhold payments.

II. COUNTY'S MATCHING FUNDS OBLIGATION OF \$39,250,000

1. The County is obligated to match PHA's Fixed Contribution of \$39,250,000.
2. The County may credit its Matching Funds obligation with any actual costs incurred by County on the Identified Project or any city, state, federal or private monies expended by the County, cities, TxDOT or other agencies on the Identified Projects (other than Port Road, Bay Area Blvd., and Fairmont Parkway Overpass).
3. The County may make its Matching Funds Contributions at its reasonable discretion (within the term of the Agreement) as determined by the development, progress and needs of the project undertaken.
4. If, in the final year of this Agreement, the County has not made a Matching Funds Contribution of \$39,250,000, PHA is authorized to adjust its final Incremental Payment to an amount that equalizes the parties' contributions or defer payment until the County's Matching Funds Contribution is equal to PHA's contribution.